

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JOSEPH RAYMOND PHILLIPS-BEY,)	
)	
Plaintiff,)	
)	
)	CIV-04-1116-M
v.)	
)	
CLIFFORD BARNARD, et al.,)	
)	
Defendants.)	

SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brings this civil rights action pursuant to 42 U.S.C. §1983. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). Before the undersigned are Plaintiff's Motion for Default Judgment as to Defendants Barnard and Dorawass (Doc. # 42) and Motion for Default Judgment as to Defendant Champion (Doc. #45). Plaintiff's Motion for Default Judgment as to Defendants Barnard and Dorawass seeks default judgment on the ground that Defendants Barnard and Dorawass failed to timely comply with the Order entered by the undersigned giving these Defendants the opportunity to amend their motion for summary judgment, which is currently pending before this Court.

Defendants Barnard and Dorawass filed a supplement to their motion for summary judgment on August 5, 2005. Plaintiff has not stated any viable grounds in support of his Motion for Default Judgment as to Defendants Barnard and Dorawass, and said Motion should be DENIED. See Ocelot Oil Co. v. Sparrow Industries, 847 F.2d 1458, 1464 (10th Cir. 1988)(discussing recognized bases for entering dismissal or default as a sanction).

Plaintiff separately seeks default judgment as to Defendant Ron Champion. Plaintiff contends that Defendant Champion has been served with process and has failed to timely respond to the Plaintiff's Complaint. However, the Court's records reflect that Defendant Champion was served with process on August 18, 2005, and his answer is due on or before October 18, 2005. See Order Requiring Special Report. Because Defendant Champion's time to answer or otherwise plead in this matter has not passed, Plaintiff's Motion for Default Judgment as to Defendant Champion should be DENIED.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's Motion for Default Judgment (Doc. # 42) as to Defendants Barnard and Dorawass be DENIED and that Plaintiff's Motion for Default Judgment (Doc. # 45) as to Defendant Champion be DENIED. Plaintiff is advised of his right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by October 31st, 2005, in accordance with 28 U.S.C. §636 and LCvR 72.1. The Plaintiff is further advised that failure to make timely objection to this Supplemental Report and Recommendation waives his right to appellate

review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Supplemental Report and Recommendation partially disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 11th day of October, 2005.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE